

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

POSILLICO CIVIL, INC.

Plaintiff

v.

SAFECO INSURANCE COMPANY
OF AMERICA

Defendant

14 CV

Civil Action No.

231

SUMMONS IN A CIVIL ACTION

JUDGE CARTER

To: *(Defendant's name and address)* **Safeco Insurance Company of America**
1001 4th Avenue, #800
Seattle, WA 98154

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: **Joseph P. Asselta, Esq.**

Forshelli Curto Deegan Schwartz Mineo & Terrana, LLP
333 Earle Ovington Boulevard, Suite 1010
Uniondale, New York 11553

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

JAN 13 2014

RUBY J. KRAJICK

CLERK OF COURT

Coherence Jan 13 2014

Date: _____

Signature of Clerk or Deputy Clerk

JUDGE CARTER

14 CV

231

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
POSILLICO CIVIL, INC.

Plaintiff,

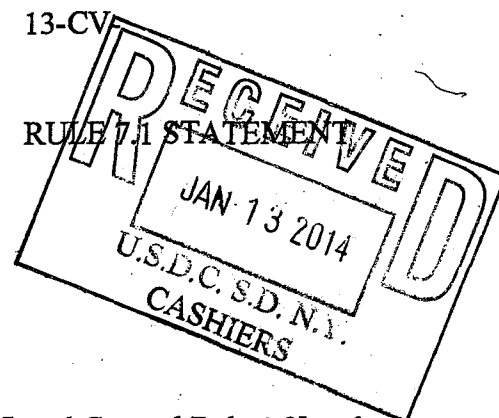
-against-

SAFECO INSURANCE COMPANY OF AMERICA,

Defendant.
-----X

13-CV


RULE 7.1 STATEMENT



Pursuant to Federal Rule of Civil Procedure 7.1 [formerly Local General Rule 1.9] and to enable District Judges and Magistrate Judges of the Court to evaluate possible disqualification or recusal, the undersigned counsel for POSILLICO CIVIL, INC., (a private non-governmental party) certifies that the following are corporate parents, affiliates and/or subsidiaries of said party, which are publicly held:

NONE

Dated: Uniondale, New York
January 10, 2014



Joseph P. Asselta, Esq.
FORCHELLI, CURTO, DEEGAN,
SCHWARTZ, MINEO & TERRANA, LLP
Attorney for Plaintiff,
Posillico Civil, Inc.
333 Earle Ovington Blvd., Ste. 1010
Uniondale, New York 11553
(516) 248-1700

JS 44C/SDNY
REV. 7/2012

JUDGE CARTER

CIVIL COVER SHEET

14 CV

231

JAN 13 2014

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for use of the Clerk of Court for the purpose of initiating the civil docket sheet.

PLAINTIFFS

Posillico Civil, Inc.

DEFENDANTS

Safeco Insurance Company of America

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP
333 Earle Ovington Blvd., Ste. 1010
Uniondale, NY 11553

ATTORNEYS (IF KNOWN)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)
(DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY)

Action on payment bond

Has this or a similar case been previously filed in SDNY at any time? No ☒ Yes ☐ Judge Previously AssignedIf yes, was this case Vol. ☐ Invol. ☐ Dismissed. No ☐ Yes ☐ If yes, give date _____ & Case No. _____IS THIS AN INTERNATIONAL ARBITRATION CASE? No ☒ Yes ☐

(PLACE AN [x] IN ONE BOX ONLY)

NATURE OF SUIT

TORTS

ACTIONS UNDER STATUTES

CONTRACT

- [] 110 INSURANCE
[] 120 MARINE
[] 130 MILLER ACT
[] 140 NEGOTIABLE INSTRUMENT
[] 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT
[] 151 MEDICARE ACT
[] 152 RECOVERY OF DEFAULTED STUDENT LOANS (EXCL VETERANS)
[] 153 RECOVERY OF OVERPAYMENT OF VETERAN'S BENEFITS
[] 160 STOCKHOLDERS SUITS
[x] 190 OTHER CONTRACT
[] 195 CONTRACT PRODUCT LIABILITY
[] 196 FRANCHISE

PERSONAL INJURY

- [] 310 AIRPLANE
[] 315 AIRPLANE PRODUCT LIABILITY
[] 320 ASSAULT, LIBEL & SLANDER
[] 330 FEDERAL EMPLOYERS' LIABILITY
[] 340 MARINE
[] 345 MARINE PRODUCT LIABILITY
[] 350 MOTOR VEHICLE
[] 355 MOTOR VEHICLE PRODUCT LIABILITY
[] 360 OTHER PERSONAL INJURY

PERSONAL INJURY

- [] 362 PERSONAL INJURY - MED MALPRACTICE
[] 365 PERSONAL INJURY PRODUCT LIABILITY
[] 368 ASBESTOS PERSONAL INJURY PRODUCT LIABILITY

PERSONAL PROPERTY

- [] 370 OTHER FRAUD
[] 371 TRUTH IN LENDING
[] 380 OTHER PERSONAL PROPERTY DAMAGE
[] 385 PROPERTY DAMAGE PRODUCT LIABILITY

FORFEITURE/PENALTY

- [] 610 AGRICULTURE
[] 620 OTHER FOOD & DRUG
[] 625 DRUG RELATED SEIZURE OF PROPERTY
[] 630 LIQUOR LAWS
[] 640 RR & TRUCK
[] 650 AIRLINE REGS
[] 660 OCCUPATIONAL SAFETY/HEALTH
[] 690 OTHER

LABOR

- [] 710 FAIR LABOR STANDARDS ACT
[] 720 LABOR/MGMT RELATIONS
[] 730 LABOR/MGMT REPORTING & DISCLOSURE ACT
[] 740 RAILWAY LABOR ACT
[] 790 OTHER LABOR LITIGATION
[] 791 EMPL RET INC SECURITY ACT

BANKRUPTCY

- [] 422 APPEAL 28 USC 158
[] 423 WITHDRAWAL 28 USC 157

PROPERTY RIGHTS

- [] 820 COPYRIGHTS
[] 830 PATENT
[] 840 TRADEMARK

SOCIAL SECURITY

- [] 861 HIA (1395ff)
[] 862 BLACK LUNG (923)
[] 863 DIWC/DIWW (405(g))
[] 864 SSID TITLE XVI
[] 865 RSI (405(g))

FEDERAL TAX SUITS

- [] 870 TAXES (U.S. Plaintiff or Defendant)
[] 871 IRS-THIRD PARTY 26 USC 7609

OTHER STATUTES

- [] 400 STATE REAPPORTIONMENT
[] 410 ANTITRUST
[] 430 BANKS & BANKING
[] 450 COMMERCE
[] 460 DEPORTATION
[] 470 RACKETEER INFLUENCED & CORRUPT ORGANIZATION ACT (RICO)
[] 480 CONSUMER CREDIT
[] 490 CABLE/SATELLITE TV
[] 810 SELECTIVE SERVICE
[] 850 SECURITIES/COMMODITIES/EXCHANGE
[] 875 CUSTOMER CHALLENGE 12 USC 3410
[] 890 OTHER STATUTORY ACTIONS
[] 891 AGRICULTURAL ACTS
[] 892 ECONOMIC STABILIZATION ACT
[] 893 ENVIRONMENTAL MATTERS
[] 894 ENERGY ALLOCATION ACT
[] 895 FREEDOM OF INFORMATION ACT
[] 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
[] 950 CONSTITUTIONALITY OF STATE STATUTES

REAL PROPERTY

- [] 210 LAND CONDEMNATION
[] 220 FORECLOSURE
[] 230 RENT LEASE & EJECTMENT
[] 240 TORTS TO LAND
[] 245 TORT PRODUCT LIABILITY
[] 290 ALL OTHER REAL PROPERTY

ACTIONS UNDER STATUTES

CIVIL RIGHTS

- [] 441 VOTING
[] 442 EMPLOYMENT
[] 443 HOUSING/ACCOMMODATIONS
[] 444 WELFARE
[] 445 AMERICANS WITH DISABILITIES - EMPLOYMENT
[] 446 AMERICANS WITH DISABILITIES - OTHER
[] 440 OTHER CIVIL RIGHTS (Non-Prisoner)

PRISONER PETITIONS

- [] 510 MOTIONS TO VACATE SENTENCE 20 USC 2255
[] 530 HABEAS CORPUS
[] 535 DEATH PENALTY
[] 540 MANDAMUS & OTHER

PRISONER CIVIL RIGHTS

- [] 550 CIVIL RIGHTS
[] 555 PRISON CONDITION

IMMIGRATION

- [] 462 NATURALIZATION APPLICATION
[] 463 HABEAS CORPUS - ALIEN DETAINEE
[] 465 OTHER IMMIGRATION ACTIONS

Check if demanded in complaint:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DO YOU CLAIM THIS CASE IS RELATED TO A CIVIL CASE NOW PENDING IN S.D.N.Y.? IF SO, STATE:

DEMAND \$ 424,762.43 OTHER _____

JUDGE _____

DOCKET NUMBER _____

Check YES only if demanded in complaint

JURY DEMAND: ☐ YES ☒ NO

NOTE: Please submit at the time of filing an explanation of why cases are deemed related.

(PLACE AN x IN ONE BOX ONLY)

ORIGIN

- ☒ 1 Original Proceeding
 ☐ 2 Removed from State Court
 ☐ 3 Remanded from Appellate Court
 ☐ 4 Reinstated or Reopened
 ☐ 5 Transferred from (Specify District)
 ☐ 6 Multidistrict Litigation
 ☐ 7 Appeal to District Judge from Magistrate Judge Judgment
- ☐ a. all parties represented
☐ b. At least one party is pro se.

(PLACE AN x IN ONE BOX ONLY)

BASIS OF JURISDICTION

 IF DIVERSITY, INDICATE
 CITIZENSHIP BELOW.
 (28 USC 1332, 1441)

- ☐ 1 U.S. PLAINTIFF
 ☐ 2 U.S. DEFENDANT
 ☐ 3 FEDERAL QUESTION (U.S. NOT A PARTY)
 ☒ 4 DIVERSITY

CITIZENSHIP OF PRINCIPAL PARTIES (FOR DIVERSITY CASES ONLY)

(Place an [X] in one box for Plaintiff and one box for Defendant)

CITIZEN OF THIS STATE	PTF DEF [] 1 [] 1	CITIZEN OR SUBJECT OF A FOREIGN COUNTRY	PTF DEF [] 3 [] 3	INCORPORATED and PRINCIPAL PLACE OF BUSINESS IN ANOTHER STATE	PTF DEF [] 5 [X] 5
CITIZEN OF ANOTHER STATE	[] 2 [] 2	INCORPORATED or PRINCIPAL PLACE OF BUSINESS IN THIS STATE	[X] 4 [] 4	FOREIGN NATION	[] 6 [] 6

PLAINTIFF(S) ADDRESS(ES) AND COUNTY(IES)

1750 New Highway
 Farmingdale, NY 11735
 Suffolk County

DEFENDANT(S) ADDRESS(ES) AND COUNTY(IES)

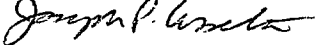
1001 4th Avenue, #800
 Seattle, WA 98154
 King County

DEFENDANT(S) ADDRESS UNKNOWN

REPRESENTATION IS HEREBY MADE THAT, AT THIS TIME, I HAVE BEEN UNABLE, WITH REASONABLE DILIGENCE, TO ASCERTAIN THE RESIDENCE ADDRESSES OF THE FOLLOWING DEFENDANTS:

Check one: THIS ACTION SHOULD BE ASSIGNED TO: ☐ WHITE PLAINS ☒ MANHATTAN
 (DO NOT check either box if this a PRISONER PETITION/PRISONER CIVIL RIGHTS COMPLAINT.)

DATE 01/10/2014 SIGNATURE OF ATTORNEY OF RECORD



ADMITTED TO PRACTICE IN THIS DISTRICT

[] NO

[X] YES (DATE ADMITTED Mo. _____ Yr. _____)

Attorney Bar Code # JA0004

RECEIPT #

Magistrate Judge is to be designated by the Clerk of the Court



Magistrate Judge _____ is so Designated.

Ruby J. Krajick, Clerk of Court by _____ Deputy Clerk, DATED _____

UNITED STATES DISTRICT COURT (NEW YORK SOUTHERN)

JUDGE CARTER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
POSILLICO CIVIL, INC.

Plaintiff,

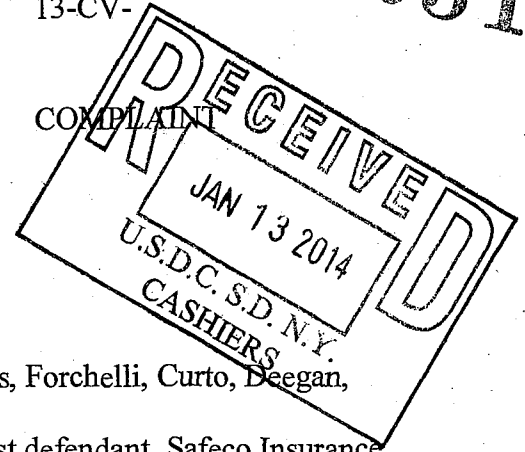
-against-

SAFECO INSURANCE COMPANY OF AMERICA,

Defendant.
-----X

14 CV 231
13-CV-

COMPLAINT



Plaintiff, Posillico Civil, Inc. ("Plaintiff"), by its attorneys, Forchelli, Curto, Deegan, Schwartz, Mineo & Terrana, LLP, as and for its complaint against defendant, Safeco Insurance Company of America ("Safeco"), avers as follows:

PARTIES AND JURISDICTION

1. At all times hereinafter mentioned, Plaintiff was and is a corporation, organized and existing under the laws of the State of New York, with its principal place of business in the State of New York.

2. At all times hereinafter mentioned, Safeco is a foreign corporation, organized and existing under the laws of the State of Washington, with its principal place of business in the State of Washington. Upon information and belief, Safeco is authorized to issue surety bonds in the State of New York.

3. This Court has jurisdiction over this action based upon diversity of citizenship pursuant to 28 U.S.C. §1332. Venue is proper pursuant to the applicable contract provisions.

FIRST CLAIM

4. The New York Power Authority, as owner, entered into a written contract with RCM Technologies, Inc., as prime contractor, for a construction project known as the Bronx Community College Campus Wide Utility Upgrade Phase 1 (the "Project").

5. Thereafter, RCM Technologies, Inc. entered into a general contract with Maric Mechanical, Inc. ("Maric") whereby Maric was to furnish certain work, labor and services to the Project.

6. Pursuant to the provisions of Maric's contract with RCM Technologies, Inc., Maric and Safeco issued a labor and material payment bond (Bond No. 67424190000, and hereinafter referred to as the "Payment Bond"), in which Maric, as principal, and Safeco, as surety, jointly and severally, bound themselves to promptly pay all persons for labor and materials furnished by them in the prosecution of work necessary for the Project.

7. Subsequently, Maric entered into a subcontract agreement with Posillico, as subcontractor, whereby Posillico was to perform trenching, backfill, excavation, concrete encasement, retaining walls, demolition and other site work for the Project (the "Subcontract").

8. Thereafter, Posillico fully, satisfactorily and timely performed all of the terms and conditions of the Subcontract it was required to perform, and is not in default of any of the Subcontract's terms.

9. However, Posillico has not received full payment from Maric for the work, labor, material and services it provided at the Project to Maric under the Subcontract.

10. As a result, there is an unpaid balance due and owing to Posillico from Maric under the Subcontract in the total amount of \$424,762.43, plus appropriate interest.

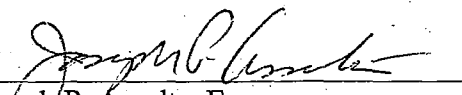
11. More than ninety (90) days, but less than one year, has expired from the last date upon which Posillico furnished work, labor, material and services to Maric at the Project.

12. Posillico has complied with all of the conditions required of it under the Payment Bond.

13. By reason of the foregoing, Safeco, as surety for Maric, is liable to Posillico, pursuant to the Payment Bond, in the sum of \$424,762.43, plus appropriate interest thereon.

WHEREFORE, plaintiff, Posillico Civil, Inc., demands judgment against defendant, Safeco Insurance Company of America, in the amount of \$424,762.43, plus appropriate interest, reasonable attorneys fees, costs and disbursements, and for such other and further relief as this Court deems just and proper.

Dated: Uniondale, New York
January 10, 2014


Joseph P. Asselta, Esq.
FORCHELLI, CURTO, DEEGAN,
SCHWARTZ, MINEO & TERRANA LLP
Attorneys for Plaintiff,
Posillico Civil, Inc.
333 Earle Ovington Blvd., Suite 1010
Uniondale, NY 11553
(516) 248-1700

Index No.

Year 20

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

POSILLICO CIVIL, INC.,

Plaintiff,

-against-

SAFECO INSURANCE COMPANY OF AMERICA,

Defendant.

SUMMONS AND COMPLAINT

Forchelli, Curto, Deegan,
Schwartz, Mineo & Terrana, LLP

Attorney(s) for

Plaintiff

The Omni

333 Earle Ovington Boulevard, Suite 1010

Uniondale, New York 11553

516-248-1700

Pursuant to 22 NYCRR 130.1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated:

Signature

Print Signer's Name

Service of a copy of the within

is hereby admitted.

Dated:

.....
Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐
NOTICE OF
ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within-named Court on

20

☐
NOTICE OF
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the
Hon. , one of the judges of the within-named Court,
at
on

20

, at

M.

Dated:

Forchelli, Curto, Deegan,
Schwartz, Mineo & Terrana, LLP

Attorney(s) for